



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201117041

FEB 04 2011

**Uniform Issue List: 408.03-00**

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T:EP:RA:RA:T2

**Legend:**

Taxpayer X = \*\*\*\*\*

IRA F = \*\*\*\*\*  
\*\*\*\*\*

Account G = \*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Amount A = \*\*\*\*\*

Date 1 = \*\*\*\*\*

Date 2 = \*\*\*\*\*

Date 3 = \*\*\*\*\*

Company A = \*\*\*\*\*

Company B = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to a request you submitted through your authorized representative on September 17, 2010, as supplemented by information received during our conference on December 9, 2010 and additional correspondence dated December 17, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408 (d) (3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer X is 73 years old. Taxpayer X maintained Individual Retirement Account (IRA), IRA F with Company A. Taxpayer X represents that Amount A was distributed from IRA F on Date 1. Taxpayer X asserts that his failure to accomplish a rollover of

Amount A within the 60-day period prescribed by section 408 (d) (3) of the Code was due to an error caused by an employee of Company B. He asserts that Amount A remains in Account G at Company B and has not been used for any other purpose.

Taxpayer X asserts that his intent was to complete a rollover of Amount A from IRA F to an IRA Certificate Deposit (IRA CD) account established with Company B, where he had a long-standing banking relationship. In early 2008, due to the downturn in the economy, the value of the investments in IRA F had lost significant value. As such, Taxpayer X contacted a financial advisor at Company B and discussed accomplishing a rollover of Amount A from IRA F to an IRA at Company B. Taxpayer X was advised to deposit Amount A in a credit union IRA CD account for 60 months at 4% interest, and since he was over 70 ½ years of age, he was advised to take the necessary required minimum distributions from his other IRA accounts. Taxpayer X agreed to go forward in this manner. He did not complete any forms or documents as he was not asked to do so.

On Date 1, Company A mailed a distribution check to Company B and sent Taxpayer X a check confirmation statement titled "CUST IRA ROLLOVER" showing the distribution of Amount A. On Date 2, Amount A was erroneously deposited in Account G (a non-IRA account) by an employee of Company B. Taxpayer X only became aware that Amount A was deposited in a non-IRA account on Date 3 after receiving IRS notice CP 2501.

Based on the facts and representations, Taxpayer X requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount A contained in section 408 (d) (3) of the Code.

Section 408 (d) (1) of the Code provides that, except as otherwise provided in section 408 (d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408 (d) (3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408 (d) (3) (A) of the Code provides that section 408 (d) (1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408 (d) (3)).

Section 408 (d) (3) (B) of the Code provides that section 408 (d) (3) does not apply to any amount described in section 408 (d) (3) (A) (i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408 (d) (3) (A) (i) from an IRA which was not includible in gross income because of the application of section 408 (d) (3).

Section 408 (d) (3) (E) of the Code provides that the rollover provisions of section 408 (d) do not apply to any amount required to be distributed under section 408 (a) (6).

Section 408 (d) (3) (I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408 (d) (3) (A) and 408 (d) (3) (D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408 (d) (3) (I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408 (d) (3) (I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation Taxpayer X submitted is consistent with his assertion that his failure to accomplish a timely rollover was due to an error caused by an employee of Company B.

Therefore, pursuant to section 408 (d) (3) (I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A (less amounts described below) from IRA F. Taxpayer X is granted a period of 60 days from the issuance of this letter ruling to contribute Amount A (less amounts described below) into a rollover IRA. Provided all other requirements of section 408 (d) (3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A (less amounts described below) will be considered a rollover contribution within the meaning of section 408 (d) (3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401 (a) (9) of the Code, made applicable to IRAs pursuant to section 408 (a) (6).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto. This letter expresses no opinion as to whether IRA F satisfied the requirements of section 408 of the Code.

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This letter is directed only to the taxpayer who requested it. Section 6110 (k) (3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \*\*\*\*\*, ID # \*\*\*\*\*, at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose